

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Number: 10/718213
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Applicant(s): Jillian JACOBSON-ALTIT
Entitled: MULTI-SENSORY PLEASANT LIP GLOSS
Examiner: Melissa S. Mercier
Group Art Unit: 1615
Attorney Docket No.: 1422-2U

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SECOND DECLARATION UNDER 37 CFR 1.132

My name is Ira S. Jacobson.

I am a medical doctor and the Declarant of the Declaration under 37 CFR 1.132 dated January 23, 2008.

1. I conducted tests on the lip gloss formulations identified in paragraph 3 of said Declaration. Formulation 1 contained no natural vernix; formulation 2 contained 10 parts by volume vernix; formulation 3 contained 25 parts by volume of vernix; and formulated 4 containing 50 parts by volume of vernix. As indicated in paragraph 4 of said Declaration natural vernix was used.

2. As described in paragraph 5 of said Declaration compositions 1, 2, 3 and 4 were divided into two parts, one set aged under ambient conditions and the other initially aged at 37°C. The set aged under ambient conditions continued to be aged over a period of 39 weeks and the set aged at 37°C continued to be aged at that temperature over a period of 16 weeks and then under ambient conditions for an additional 23 weeks.

3. In my conduct of the tests a panel of myself and four other participants observed each of the formulations for fragrance and cosmetic integrity.

The participants were:

1. Male age 64 (myself)
2. Female age 62; experienced lip gloss user

3. Female age 60; experienced lip gloss user
4. Female age 32; experienced lip gloss user
5. Female age 36; experienced lip gloss user
4. The Ambient temperature observations set forth in paragraph 6 and the 37°C.temperature results set forth in paragraph 7 of said Declaration represent a consensus of the objective observations of the five participants during a period of up to 13 weeks.
5. The 16 week objective observations on fragrance at ambient temperature by each participant are:

<u>Formulation</u>	<u>Participant</u>				
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
#1-no vernix	5	5	5	5	5
#2-10 parts vernix	3	2	2	2	1
#3-25 parts vernix	2	2	1	1	2
#4-50 parts vernix	1	1	0	1	1

A score of 5 represents a pleasant fragrance; 4 a somewhat less pleasant fragrance; 3 or 2 a neutral fragrance; 1 a mildly unpleasant fragrance; and 0 unpleasant fragrance for this test as well as the tests set forth below.

6. The consensus of the participants is that after 16 weeks at ambient temperature the formulation without vernix maintains a pleasant fragrance while the fragrance markedly deteriorates to neutral and even unpleasant when vernix is present..
7. The 16 week objective observations on fragrance and where pertinent, cosmetic integrity, at 37°C by each participant are:

<u>Formulation</u>	<u>Participant</u>				
	1	2	3	4	5
#1-no vernix	5	5	5	5	5
#2-10 parts vernix	1	1	0	1	1
#3-25 parts vernix	1	0	1	0	1
	sticky	sticky			
#4-50 parts vernix	1	1	1	0	1
				sticky	

8. The consensus of the participants is that after 16 weeks at 37°C the formulation without vernix maintains a pleasant fragrance while with vernix present the fragrance markedly deteriorates to unpleasant with observed lessened cosmetic integrity by some participants.

9. The 39 week objective observations on fragrance at ambient temperature by each participant are:

<u>Formulation</u>	<u>Participant</u>				
	1	2	3	4	5
#1-no vernix	5	5	5	5	5
#2-10 parts vernix	2	2	3	2	3
#3-25 parts vernix	3	3	2	3	2
#4-50 parts vernix	2	2	2	1	2

10. The consensus of the participants is that after 39 weeks at ambient temperature the formulation without vernix maintains a pleasant fragrance while the fragrances are generally similar to the 16 week ambient temperature observations with neutral and even unpleasant fragrances when vernix is present..

11. The objective observations on fragrance and, where pertinent, cosmetic integrity, for the formulations aged for 16 weeks at 37°C and then at ambient for 23 additional weeks by each participant are:

<u>Formulation</u>	<u>Participant</u>				
	1	2	3	4	5
#1-no vernix	5	5	5	4	4
#2-10 parts vernix	1	2	1	1	1
	dry	dry	dry	clayey	clayey
#3-25 parts vernix	1	1	0	1	1
	clayey	dry	clayey	clayey	clayey
#4-50 parts vernix	1	2	1	1	2
	dry	clayey	clayey	clayey	clayey

12. The consensus of the participants is that after 16 weeks at 37°C and 23 additional weeks at ambient temperature the formulation without vernix generally maintains a pleasant fragrance while with vernix present it markedly deteriorates to unpleasant with always observed loss of cosmetic integrity and deterioration by all participants.

13. Based upon the objective observations of the panel described above it is concluded that when vernix is present in the lip gloss of patent application SN 10/718,213 it undergoes diminished stability over a period of time particularly characterized by loss of fragrance followed by loss of product integrity. The loss of cosmetic integrity is most evident with product stored at elevated temperature. The elevated temperature accelerates what would occur over a longer period of time under ambient conditions and also simulates what would occur with the product should it stored in an automobile glove compartment under summer conditions or in typical U.S. subtropical climate.

14. The Declarant also states that he was asked to locate a source of synthetic vernix, recognizing that the cited patent of Shanni indicates that besides natural vernix, vernix can also be “a synthetically produced entity from commercially manufactured chemical compounds”. No commercial source is identified. Declarant diligently inquired of experts at the Miami Project to Cure Paralysis, an entity recognized for spinal cord and rehabilitation research, likely to be knowledgeable of commercial sources, of synthetic vernix but could not get leads to locate synthetic vernix. Accordingly, I could not prepare have lip gloss formulations made with synthetic vernix.

15. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true and, further that willful false statements are punishable by fine or imprisonment or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date:

8/1/08

Name:

Tracy M.D.